

Application No. 09/698,640

### REMARKS

In the Office Action mailed June 7, 2004, the Examiner rejected pending claims 1-4. Claims 1-4 have been amended, and claim 5 has been added. Claims 1-5 remain pending in the application (1 independent, 5 total). No new matter has been added. Reconsideration is respectfully requested in light of the following Remarks.

#### A. Previous Claim Rejections - 35 U.S.C. § 112

Applicant thanks the Examiner for withdrawing the Section 112 rejections cited in the previous Office Action.

#### B. Previous Claim Rejections - 35 U.S.C. § 101

Applicant further thanks the Examiner for withdrawing the Section 101 rejections cited in the previous Office Action.

#### C. Claim Rejections -- 35 U.S.C. § 103

Claims 1-4 stand rejected under Section 103(a) as being unpatentable over U.S. Pat. No. 5,826,244 (the "Huberman reference") in view of previously-cited U.S. Pat. No. 6,553,346 (the "Walker reference"). That is, the Examiner has cited a new primary reference in combination with the Walker reference. This rejection is respectfully traversed.

Specifically, the Examiner states that:

Huberman does not go into detail concerning pools. Walker inherently and obviously teaches pools of merchants and customers by definition when discussing the type of item or service being auctioned.

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The Examiner then cites the following example: "[i]f a customer is requesting bids on an airline reservation, it is obvious that a toy seller is not going to be part of that merchant pool bidding on that ticket, and that the customer is self selected at least in a pool of airline ticket buyers."

Thus, the Examiner is equating the word "pool" in the present invention with "self-selection" (by type of item) as used in Walker. Applicant disagrees, and respectfully submits that no combination of the Huberman and Walker references includes each and every element of the claims as amended, and furthermore that there is no motivation to combine the cited references.

1. *Walker does not disclose "pooling"*

The Walker reference does not disclose the step of grouping customers into one or more pools in accordance with a Preferred Program Term. The Walker reference merely discloses, as the Examiner notes, a type of "self-selection" of a conceptual nature. That is, the Walker reference categorizes or partitions CPOs, but does not pool, partition, or otherwise categorize the customers who actually intend to purchase the individual products. In no way can the conceptual "self-selection" of Walker be considered partitioning of customers. Customer information as to the desired product is clearly not a "Program Term" as that phrase is used in the claims as amended -- i.e., a predefined term, quality, incentive, or other such indicia associated with a product or service that is the subject of the auction. Claim 1 has been amended to clarify this distinction.

Furthermore, as none of the cited references relate to customer pooling in the context of an auction, none of the references disclose "characteristic pooling," "commitment pooling," or "ghost pooling" as recited in dependent claims 2-4.

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2. *Walker does not disclose an "auction"*

Furthermore, as noted in Applicant's previous response, the Walker reference discloses the "deconstruction" of an overall package into component CPOs which are individually offered to sellers. The Walker reference merely discloses the step of offering the CPO to one or more merchants, then binding the buyer in response to an acceptance by the merchant. Thus, Walker does not disclose an "auction" as recited in the present application. While the Huberman reference generally discloses a type of auction, this reference does not, as the Examiner notes, include a disclosure of pooling as that term is used in the present invention. There would therefore be no motivation for someone skilled in the art to look to Walker in the context of implementing auctions of the type disclosed by Huberman.

In accordance with the above, Applicant requests that the Section 103 rejection be withdrawn with respect to the claims as amended.

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**D. Conclusion**


In view of the above remarks, Applicants respectfully submitted that the foregoing remarks fully address the Examiner's objections, and that all of the pending claims comply with 35 U.S.C. § 112, are patentable over the art of record, are directed at statutory subject matter, and are in condition for allowance.

A Notice of Allowance respecting all pending claims is earnestly solicited. Should the Examiner wish to discuss any of the above in greater detail, then the Examiner is invited to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,

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By

  
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